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Francis E. Pierce Jr.

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ECONOMICS OF LAW PRACTICE

FRANCIS E. PIERCE, JR.*

The efforts of the Economics of Law Practice Committee, comprising seminars, legal systems notebooks and manuals, audio and video tapes, and a magazine are discussed. In addition, developments in law school curricula, computerized legal research and office management, and credit cards are the subject of this article.

I. THE NEED AND RESPONSE

The rising incidence of legal malpractice actions¹ and the inability of the legal profession to deliver services economically to the middle class are factors which have impelled the Economics of Law Practice Committee of the Florida Bar to develop a number of programs. Equality under the law² is illusory for Americans who are neither poor enough to qualify for subsidized legal representation nor rich enough to pay what it costs today to provide competent legal attention.³ Similarly caught in this economic gulf is the sole practitioner, and his plight the subject of the Committee's second annual seminars in 1976. Over a thousand Florida lawyers heard national experts analyze developments in law practice systems as well as financial and staff management.⁴

II. GENERAL DEVELOPMENTS

A. Education

Several areas of legal economics are having an impact on legal

* Chairman of the Florida Bar's Committee on Economics of Law Practice; teacher in law office management at Valencia Community College in Orlando.

1. See *The Troubled Professions*, BUSINESS WEEK August 16, 1976 at 126.

2. The promises of equality under the law, as defined in the Declaration of Independence and the Constitution, are causes of consternation in the legal profession.

3. The high cost of legal services keeps many Americans from having access to the rights described under the Constitution. Legal Services readily are available to the affluent, since they have the means to pay high legal fees. The poor often have been given access to free legal representation by the organized bar or the government.

4. Audio and video tape cassettes of the 1976 seminars will be available shortly. The March and May 1977 seminars focused on automation, the training and use of law office assistants, and the development of law office systems. Systems discussed include those for the following areas of law: dissolution of marriage, ERISA, personal injury, probate, corporation and collection.

education and practice. Courses in legal economics increasingly are becoming available, though slowly.

For instance, the University of Miami Law School, the pioneer school in legal economics, has had a very successful course in law office management for several years. This year efforts will be made by the Economics of Law Committee to have other law schools in Florida follow the example of the University of Miami. Students are beginning to receive training in the use of computers for legal research. Although neither Westlaw nor Lexis offers complete access to all federal and state cases, and despite their considerable costs, such systems clearly will become a standard research tool in the coming years.

B. *Credit Cards*

In a series of actions the Supreme Court of Florida has laid the groundwork for the use of credit cards in paying legal fees. In 1975 the court adopted amendments to the Code of Professional Responsibility providing for approved credit plans.⁵ Subsequently, the court approved a proposed contract between The Florida Bar and the American Express Company.⁶ In 1976 the court approved a "Master Charge Attorney Participants Agreement" for use by Sun First National Bank of Orlando and all other master charge banks wishing to use an identical agreement.⁷ The court designated Justice Arthur J. England, Jr. as the court's representative to the credit card companies and to The Florida Bar for the implementation and promotion of credit card arrangements. To date the utilization of such arrangements has not been pursued widely, and their future is unclear.

C. *Technological Advances*

The use of computers is receiving increasing acceptance in the area of typing and information processing. Equipment is available which permits the recording, storage, retrieval, analysis, editing, and updating of client data, documents, forms, timekeeping, accounting, productivity, and docketing control. A necessary comple-

5. *In re* Amendment of the Code of Professional Responsibility, 316 So. 2d 52, 54 (Fla. 1975).

6. *In re* Amendment of the Code of Professional Responsibility, 323 So. 2d 556 (Fla. 1975).

7. *In re* Amendment of the Code of Professional Responsibility, 327 So. 2d 1 (Fla. 1976).

ment to such systems are magnetic card typewriters, which provide great flexibility in adapting and editing materials for rapid, error-free automatic retyping.

The variety of such equipment is great and prospective consumers should consider the following: (1) the availability of a local sales and service representative; (2) leasing or renting; (3) actual demonstrations of all the equipment; (4) the experience of others with similar equipment; and (5) the need for improvement in other systems, such as dictating equipment which links the lawyer with his typist. Versatile equipment for smaller offices is continually being introduced, and sharing arrangements also can reduce costs.

III. THE DEVELOPMENT OF LEGAL SYSTEMS

The heart of the Economics of Law Practice Committee's effort to meet the need for affordable legal services has been to lower lawyers' costs and to improve their efficiency by means of "legal systems,"⁸ which permit greater reliance on legal assistants and secretaries. A typical legal system,⁹ such as those produced for probate and family law, is a looseleaf binder containing instructional materials and "consumables." Each system usually contains seven sections.

Section A is a system overview consisting of: (1) instructions for the use of the system; (2) a glossary of terms commonly used in the substantive area; (3) a systematic plan for the management of the client's matter; and (4) a flow chart of the procedure to be used in handling the case.

Section B is the attorney's instructions, including: (1) an explanation of the procedure to be followed, illustrated by an appropriate fact pattern; (2) the attorney's procedural outline, indicating points at which to review the legal assistant's work; and (3) a series of legal annotations.

8. The Economics of Law Practice Committee believes that the systems approach would enable an attorney to deliver high quality legal service to more people at a lower cost. Therefore, the committee feels that these systems can give middle America the same legal services enjoyed by the rich and poor.

9. The systems approach is composed of three simple steps. These are: (1) The attorney meets with his client to gather the essential information and record it on the master information list (MIL); (2) after the MIL is completed the legal assistant performs routine functions from the information and, as directed by the lawyer, monitors procedural deadlines; and (3) the secretary prepares the documents needed to complete the client matter, preparing them for the attorney's review.

Section C is a "consumable" master information list into which the attorney enters information from the client interview, and from which the legal assistant and secretary monitor deadlines and complete the documents required. Each item in the master list is assigned a master number which is keyed to the forms in the system. Section E is another "consumable," a special information list for more complex substantive problems which may require additional information lists.

Section D is the legal assistant's instructions, containing an explanation of the assistant's role in developing the case and a detailed procedural outline and checklist for deadlines and office records of completed tasks. The "tickler" system itself is section G, the Sans-Copy System.¹⁰

Section F will contain the forms and model documents to complete the case. These have been analyzed and edited by recognized experts.

Availability of these systems is imminent in a few fields. Other systems developments are projected for the near future. Still other fields are suitable to systems organization and this author advocates extension of systems into those fields.

Since much of the work of probating a simple estate is the routine compilation of assets, valuations, and property descriptions, the Florida Probate Legal System¹¹ is directed toward the economical step-by-step handling of typical testate and intestate cases. The system includes heir distribution charts, a list of the most common errors made by attorneys in probate proceedings and how to avoid them, decedent's property checklists, complete procedural outlines for both the attorney and legal assistant, and all necessary forms for probating the typical decedent's estate.

After receiving some technical objections when the 1975 prototype was produced, a new Florida Family Law Legal System is in preparation with distribution possible this year.¹² One focus of the system is increased efficiency in dealing with default divorce cases.

10. This system has been developed by Dr. Kline Strong, of the University of Utah Law School.

11. The probate system basically has been developed by Rohan Kelly of Ft. Lauderdale, with the assistance of Harry Gaylord of Eustis, John Jones of Tampa, Phillip O'Connell, Jr. of West Palm Beach, Joel Sharp of Orlando, and Fred Steffey of Jacksonville.

12. Michael J. DeMarko of Pensacola is primarily responsible for the preparation of the family law system.

The system will contain model complaints, orders, decrees, separation agreements, and findings of fact, together with suggested alternatives. The master information list organizes all the data into a checklist easily allowing the attorney to choose, for instance, the paragraphs of a pleading to be composed by a legal assistant. Another part of the list organizes indexes of assets, property descriptions and other data necessary for settlement.

The Economics of Law Practice Committee contemplates a whole series of legal systems, covering typical cases with special materials for more complex situations. The systems the committee presently contemplates include estate planning,¹³ real estate,¹⁴ corporations,¹⁵ collections,¹⁶ and bankruptcy.¹⁷ All ministerial functions will be outlined for completion by non-lawyers. The forms, checklists, annotations, and procedures for the systems will be field-tested by experts. Experience with similar systems has proved that both attorneys *and* legal assistants can save enough time and error to restore the nonspecialist to competitiveness in these areas.

A useful adjunct to the system handbooks in substantive areas will be administrative manuals for office management. A law office

13. This system which probably will be designed to handle a typical estate in the \$200,000 to \$300,000 range may be used effectively for other estates with appropriate modification. The system should contain comprehensive will and trust forms for the proposed estate plan as well as alternative provisions. Federal estate and gift tax laws will provide the legal substance for the plan.

14. The system can divide the functions to be performed by the attorney and legal assistant, thereby effectively reducing the time required of the attorney in real estate to closings. Furthermore, the real estate system can include instructions for preparing closing forms as well as samples of completed forms and calculations.

15. A corporations system would be designed to cover the formation of a typical private corporation having no unusual tax or securities aspects. The attorney instruction section would contain legal notes and annotations, covering topics such as the form of the entity, pre-incorporation agreements, corporate name, purpose and powers clause, stock repurchase agreement, and employee benefit plans.

16. The collections system would contain a comprehensive plan for the efficient collection of unsecured retail or commercial debts. In other jurisdictions attorneys have reported a reduction of fifty percent in the time required to complete an error-free collection, when utilizing such a system. The system's special information list would include detailed annotation on problems such as assignment for the benefit of creditors, bulk transfers, exempt property, fraudulent conveyances, and garnishment procedures.

17. This system could provide the attorney with procedures for: (1) preparing the initial pleadings; (2) preparing for the court appearance at the first meeting of creditors; and (3) receiving compensation for his services from the bankruptcy estate. It would be useful for the system to provide a checklist for exempt property, a preliminary bankruptcy questionnaire, legal notes on the wage earner's plan, and detailed explanations and annotations concerning the filing of each section of the voluntary bankruptcy petition.

staff manual would contain procedures for mail, telephone, supply, and library; provisions for holidays, sick leaves, vacations, and rules of conduct. Such a manual would also house system descriptions too specialized to require reading by all the staff, such as timekeeping, bookkeeping, financial management, the tickler system, and any other system peculiar to an individual law office.

An executive manual would provide in depth treatment of the policy, theory, and implementation of effective office management principles; division of partnership profits; training, compensation, and promotion of associates and lay employees; and effective use of paralegals. A secretarial selection manual might have the greatest significance. Such a manual would contain application forms, tests to measure key secretarial skills (including prerecorded cassettes for oral tests), a scoring key to compare applicants with national standards, methods of analyzing past performance, and instructions for secretaries and their administrators.

IV. INFORMATION ON LEGAL ECONOMICS

Florida lawyers have access to numerous sources of information on legal economics, such as bar journals, *Legal Economics* magazine,¹⁸ seminars, cassettes, and the forthcoming Florida legal system. Vendors of law office equipment generally provide knowledgeable and cooperative assistance. Commercial consulting firms advertise in many periodicals. Anyone interested in participating in these methods of serving the public more effectively has a viable opportunity. Those attorneys wishing to assist the Florida Bar Committee on the Economics of Law Practice by authoring individual substantive systems for Florida are encouraged to contact the committee.

18. *Legal Economics* is published by the American Bar Association, Section of Economics of Law Practice.